

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2643 OF 2006

Vijay Devshankar Dave	)	
Indian Inhabitant of Mumbai	)	
Residing at Ratan Apartment,	)	
Ground Floor, Flat No.8.	)	
S.V. Road, Borivali (W),	)	
Mumbai - 400 092.	)	Petitioner.

V/s

1. The Mumbai Diamond	)	
Merchant's Association,	)	
22/23, & 547, Pancharatna,	)	
Ground Floor, Opera House,	)	
Mumbai - 400 004.	)	
	)	
2. M.M. Sayyed,	)	
Presiding Officer, 10 th Labour	)	
Court, Mumbai, having his office	)	
at New Administrative Building,	)	
Bandra (E), Mumbai	)	Respondents.

Mr. K.S. Bapat for the Petitioner.

Mr. V.P. Vaidya with Neel Helekar for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 27th June, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.1.

2. Petitioner is challenging the Judgment and Award dated 17/03/2006 whereby reference in respect Petitioner's dismissal has been rejected by the Presiding Officer, 10th Labour Court, Mumbai.

3. Brief facts which are relevant for the purpose of deciding the present Petition are as under:-

FACTS:

4. Petitioner joined the services of Respondent No.1 in the year 1980-81 as Assistant Secretary-Cum-Assistant Accountant. It is the case of the Petitioner that his services were terminated on 12/04/2001 without holding any departmental inquiry or issuing charge-sheet. Petitioner, therefore, raised industrial dispute and claimed for reinstatement with continuity of service with full back wages. It was alleged in the Statement of Claim that his services were terminated without following due process of law and that he was not given any notice or notice pay prior to his termination. Respondent No.1 filed its Written Statement and it was alleged that services of the Petitioner were terminated for proved misconduct. It was alleged

in the Written Statement that the Petitioner had informed Respondent No.1 that he was not interested in doing the work and, therefore, Respondent No.1 was justified in terminating his services. It was also alleged that Respondent No.1 by its letter dated 16/04/2001 called upon the Petitioner to collect his legal dues. It was also the case of Respondent No.1 that the Petitioner was not a workman and that Respondent No.1 was not an industry as contemplated under the Industrial Disputes Act. It was also contended that the past record of the Petitioner was not good and that on 02/02/1996 when the Petitioner was informed about his unsatisfactory work, he had, by his letter dated 03/02/1996, admitted his guilt and had asked the management to condone the misconduct which was committed by him.

5. After the Statement of Claim and Written Statement was filed, both the parties led evidence. The Labour Court, however, rejected the said reference.

SUBMISSIONS:

6. Mr. Bapat, the learned Counsel appearing on behalf of the

Petitioner, submitted that though he was initially appointed as an Assistant Secretary-Cum-Assistant Accountant, after first year, he had not worked as Accountant but was merely doing the clerical work. He submitted that, therefore, when the Petitioner was asked to do the said work, he had informed Respondent No.1 by his letter dated 02/04/2001 that the accounts work should not be entrusted to him. He submitted that the said reply was wrongly construed as an admission of misconduct by the Labour Court. He submitted that no inquiry was conducted by Respondent No.1 and, abruptly, Petitioner's services were terminated. He submitted that in the letter of termination, the actual misconduct was not stated and that no evidence had been led or the misconduct was not narrated in the evidence led by the management. He further submitted that the management's witness viz. one Prakash Shah admitted in his cross-examination that he could not read or write in English. He submitted that on the basis of this admission in cross-examination, the entire testimony of management's witness had to be discarded. He further submitted that in letter dated 03/02/1996 which was written by the Petitioner, he has not admitted his guilt as alleged by Respondent No.1 but had merely stated that if any inconvenience had been caused because of mistake while performing his duty, management should

pardon the said mistake. He submitted that the said reply should not be construed as confession on the part of the Petitioner.

7. The learned Counsel appearing on behalf of Respondent No.1, on the other hand, submitted that in view of the conduct of the Petitioner herein, which was clearly reflected from two letters which were admittedly written by the Petitioner viz. dated 03/02/1996 and 02/04/2001, it was abundantly clear that the Petitioner was not interested in performing his duties. The learned Counsel invited my attention to the letter of appointment in which it was specifically stated that he was appointed as an Assistant Accountant-Cum-Assistant Secretary and, in the letter, it was specified that he was also required to do clerical work. He submitted that, therefore, nature of duties were clearly reflected from the said letter of appointment and it was not open for the Petitioner to subsequently refuse to do the accounting work. He submitted that since there was a letter on record which was admittedly written by the Petitioner, there was no necessity of holding further inquiry and that it clearly indicated that the Petitioner was not interested in doing his duties. He further submitted that the Labour Court having arrived at a particular conclusion, this Court while exercising its writ jurisdiction under Article 226 of the Constitution of India should not interfere with the

well reasoned order which is passed by the Labour Court.

FINDINGS AND CONCLUSION:

8. It is an admitted position that the Petitioner was working with Respondent No.1 which is the Mumbai Diamond Merchant's Association. Further, it is an admitted position that neither a show cause notice was issued to the Petitioner nor any charge-sheet was filed against him and that no domestic inquiry was held for misconduct. The Labour Court, after appreciating the material on record, has rightly come to the conclusion that Respondent No.1 is an industry within the definition of section 2(f) of the Industrial Disputes Act.

9. The Labour Court, however, in my view, has committed an error of law in coming to the conclusion that Respondent No.1 proved the misconduct of Petitioner before the Labour Court on the basis of letter of termination which is at Exhibit U-7. The Labour Court has been influenced by letter dated 02/04/2001 which was written by the Petitioner to the management in which he has requested the management not to give accounting work to him. The Labour Court

has, on the basis of the said letter, held that this itself amounted to a serious misconduct. The Labour Court also has erred in treating the letter dated 03/02/1996 as an unconditional apology. The entire approach of the Labour Court is, therefore, in my view, to say the least, erroneous. The Labour Court ought to have considered whether any evidence had been led by the management apart from these three letters to establish the misconduct on the part of the Petitioner. Prakash Shah, who has been examined by the management in support of its case has candidly admitted in his cross-examination as follows:-

“I do not know English language and I did not read my affidavit.”

This admission, therefore, clearly establishes that the evidence which he has given on affidavit will have to be discarded and cannot be considered while appreciating the case of the management. Respondent No.1, therefore, has miserably failed in establishing that the Petitioner had committed serious misconduct. The letters on which reliance is placed by Respondent No.1 by themselves cannot be treated as an act of serious misconduct.

10. In the result, submission made by the learned Counsel appearing for Respondent No.1 cannot be accepted. The Judgment and Award passed by the Labour Court will have to be set aside and Respondent No.1 is directed to reinstate the Petitioner with continuity of service with full back wages. Rule is made absolute in terms of prayer clause (a). Under the circumstances, there shall be no order as to costs. Respondent No.1 is directed to reinstate the Petitioner within a period of 12 weeks from today.

(V. M. KANADE, J.)